

**AFFIDAVIT OF PHILIP SCHMIDT  
JULY, 2008**

I, Philip Schmidt, having been duly sworn, state upon oath:

1. I am the same Philip Schmidt who in 1995 resided near the site where Vilmar Cabaccang was stabbed. I heard a commotion and went to the place where Cabaccang was on the ground.

2. I saw a person walk away from the crime scene and testified at Taryn Christian's trial that the person walking away was Taryn Christian.

3. The person I saw walk away had long hair in the back. One of the reasons I picked Taryn Christian out of a photographic lineup was that the picture of Christian in that lineup appeared to be a photo of a person with long hair in the back. I initially told police I was reasonably confident in my photo identification of Christian.

4. However, prior to trial I received information that Taryn Christian had worked at a restaurant next to a golf course where I played golf. I was concerned that I had picked Christian from the lineup because his face was familiar to me. Because of this information about having seen Christian previously, I called police and expressed doubts about my identification. A police officer assured me that my identification was correct. The officer told me that Christian had confessed.

5. After the time of trial, I began having growing doubts about the accuracy of my identification of Christian. At this point, I feel certain that Christian was not the person I saw walking away.

6. If Christian had short hair in back at the time of the Cabaccang homicide, he could not have been the person who I saw leaving the crime scene.

7. Regardless, of the short hair, I believe Christian can be excluded based on his facial characteristics.

8. On June 22, 2008, I viewed a copy of a photographic lineup which is attached here to my affidavit. When I was shown this lineup it was marked Exhibit 56. It now is also marked with my initials and with the designation Exhibit SC-1.

9. Upon being shown the lineup, I breathed heavily because person number five in the lineup stuck out to me as being the person I saw walk away from the crime scene. Person number five in the lineup is the person I saw walking away.

10. After I picked out photo number five, Investigator George Donaldson told me that photo number five in Exhibit SC-1 is a photograph of James Burkhart. If that photo is in fact a photo of Burkhart, Burkhart is the person I saw walking away.

11. I have reexamined the photo of Taryn Christian from the photo lineup I saw in 1995. A copy of that photo lineup is attached here as Exhibit SC-2 and has my initials on it. I now recognize the possibility that the photo is of a person without long hair and that it is only a shadow or shading that gives the appearance of long hair. I did not in 1995 recognize the possibility that the long hair was only a shadow or shading. Assuming the dark spot behind the head is a shadow or shading, I was misled by that shadow or shading into believing the person walking away could have been Christian.

12. In addition to viewing lineups on June 22, 2008, I listened, on that same date to a recording of a 911 call to police regarding the Cabaccang homicide.

13. It was Cabaccang who can be heard on the tape saying that James Burkhart just walked off. Even though Cabaccang's voice was weak during the 911 call, I am confident that it was Cabaccang, rather than Rob Perry, making the Burkhart statement. I am certain that I did not make the statement regarding Burkhart. I have never met Burkhart and had not heard of him at the time of the Cabaccang stabbing.

14. When I approached Cabaccang, I noticed a small knife with blood on it in Cabaccang's hand.

15. I never did see a large knife although there may well have been one in

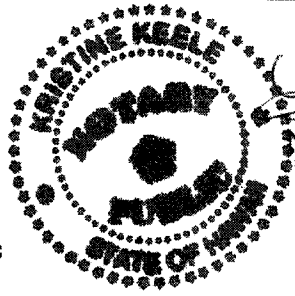
the vicinity. I was surprised to learn later that a large knife was in evidence in the case and no small knife had been taken into evidence. I discussed the small knife with police and, regardless of this discussion, it seems impossible to me that any investigator could have overlooked the small knife.

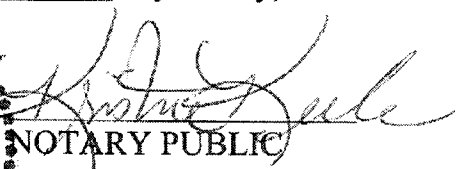
16. Although a number of years have passed, I have a fairly sharp image in my mind of the person I saw walking away from the Cabaccang homicide. I am confident now that the person I saw walking away is the one depicted in photograph five of Exhibit SC-1, a person identified to me as James Burkhart.

Further affiant saith not.

  
PHILLIP SCHMIDT

Subscribed and sworn to before me on this 15<sup>th</sup> day of July, 2008.

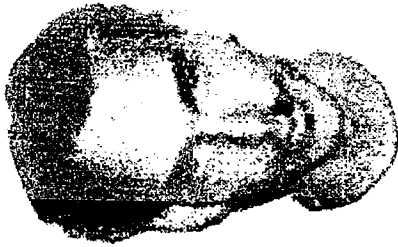


  
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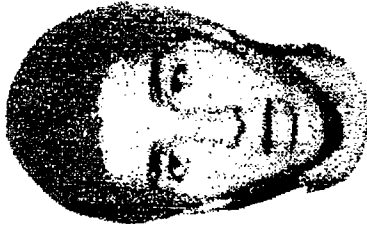
My commission expires:  
My Commission Expires  
April 11, 2011



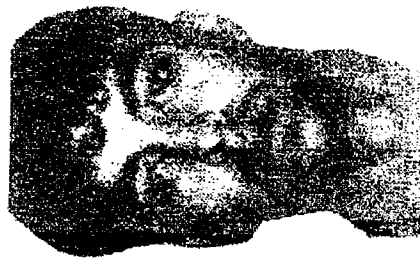
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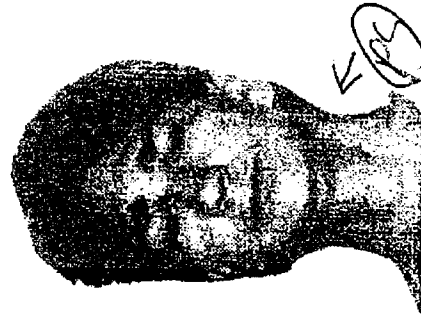
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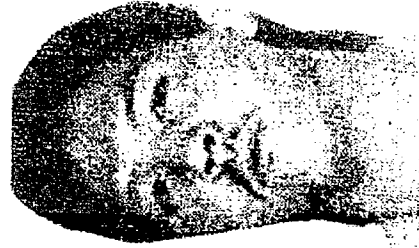
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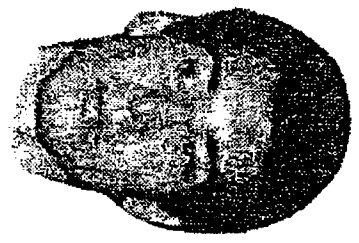
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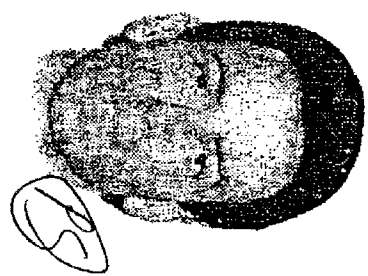
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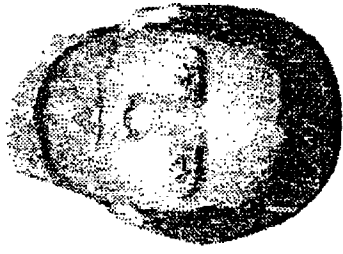
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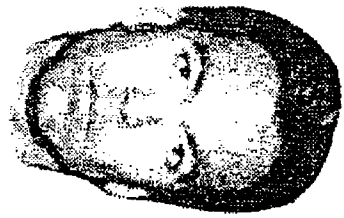
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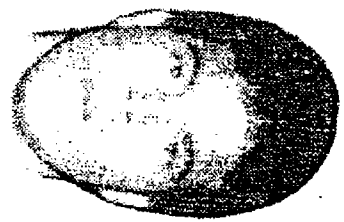
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EXHIBIT SC - 2

Exhibit 5-5